

In re Temol, 6 ROP Intrm. 326 (1996)
**IN THE MATTER OF
MECHEDEI TEMOL,
an alleged juvenile delinquent.**

JUVENILE CASE NO. 3-96

Supreme Court, Trial Division
Republic of Palau

Order

Decided: August 15, 1996

Counsel for Plaintiff: Jerrlyn U. Sengebau

Counsel for Defendant: Marvin Hamilton

ARTHUR NGIRAKLSONG, Chief Justice:

This matter is before the court on defendant's motion to suppress his written confession for having been improperly obtained.

Background

On February 4, 1996, defendant became a suspect during a police investigation of an incident in which a tourist was robbed of \$700 in the Ben Franklin parking lot. Later that day, police went to defendant's home and spoke with this mother, who informed them that defendant was not home. Later, defendant's mother called the police station to inform the police that defendant had come home. Police returned to defendant's residence and apparently spoke with his mother inside the house while defendant waited outside the house. As police left the residence, defendant's mother told defendant "that he should go with [the officers] and that he should tell [them] the truth." May 20, 1996 affidavit of officer John Deck. On the way to the police station, defendant stated that he had taken the money, and asked to be returned to his home, where he handed \$420 to officers, who then arrested him; this was at approximately 9:40 p.m. At some point during this second visit to the house, the officers asked defendant his birth date and his age. The officers then held the defendant in jail overnight.

The following day, at approximately 12:30 p.m., Lieutenant Mickey Gibson conducted a custodial interrogation of the defendant after informing him, in both English and Palauan, of his rights to **1327** remain silent and to have a lawyer present, as well as that a public defender was available free of charge. The officer also conveyed the warning that anything defendant might say could be used against him in a court of law. Lt. Gibson then asked defendant if he wanted to talk without a lawyer present, and defendant indicated that he did, signing a written Miranda waiver form in the presence of an officer.

In addition, at approximately 1:10 p.m., defendant gave the investigators a signed, hand-

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written statement, which translates into English as follows:

I Mechedei writing my statement. Me and Ian were together the two of us and a Japanese person called us to come and asked for marijuana and so we said no more, and so this person asked if we had any for sale and this person took out his money and was counting, and so we took from this person's hands and ran away and this person ran after us.

During the questioning, the officers also ascertained that defendant was unemployed and that he was 18 years old. Defendant was then released from custody.

Analysis

Defendant contends that his written confession should be suppressed because the officers conducted the interview without having sufficiently apprized the defendant of his legal rights under 18 PNC § 218, which codifies the warning established in *Miranda v. Arizona*, 86 S.Ct. 1602 (1966), as well as other rights that were unique to the Trust Territory under the Trust Territory Code.

Specifically, defendant argues that this confession was obtained improperly because the officers failed to inform him of his right to see his family or employer, his right to send a message to his family or employer, and his right to be charged or released within 24 hours, as required under 18 PNC §§ 218 (a) (1), (2), and (3). 18 PNC § 220 requires the suppression of evidence obtained "as a result of" investigators' failure to inform a defendant of his rights enumerated in 18 PNC § 218 prior to questioning.

The purpose of the prophylactic rule established in *Miranda* is to protect defendants from making involuntary or coerced confessions in the intimidating atmosphere of an interrogation **1328** conducted in police custody. Defendant does not explain how being informed of his rights to contact a family member or employer or to be charged or released within 24 hours furthers that policy. Defendant does not assert that had he been warned of these rights, that he would not have made the written statement. Even so, the burden rests with the government to establish by a preponderance of the evidence that the confession was properly obtained, *Colorado v. Connelly*, 107 S.Ct. 515, 522-23 (1986), which burden the government satisfied. Defendant also conceded at the hearing that voluntariness was not an issue.

Although this Court looks to the totality of the circumstances surrounding the interrogation in assessing the voluntariness of a custodially obtained confession, *Frazier v. Cupp*, 89 S.Ct. 1420, 1425 (1969); *Trust Territory v. Poll*, 3 TTR 387, 402 (1968), in this case defendant concedes that his confession was not the result of any coercion brought upon him by police and that it was in fact voluntary. Rather, defendant contends that because the police failed to read him all of his rights, his confession must be suppressed.

Defendant relies on historical rulings of the Trust Territory High Court in arguing that *Miranda's* more limited prophylactic rule should be extended to the entirety of 18 PNC § 218, the

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successor statute to 12 TTC § 68. In *Trust Territory v. Poll*, 3 TTR 387 (1968), the Trial Division, in adopting the Miranda decision, found that Miranda's significance was in "rely"[ing] much less than formerly on a suspect's having to take the initiative in asserting his rights. *Trust Territory v. Poll*, 3 TTR, at 397. The Court further held that the totality of the circumstances would determine the voluntariness of a confession, and that "[t]he warnings specified by the majority in Miranda are to be expected." *Trust Territory v. Poll*, 3 TTR at 402. Although in its decision the Poll court refers to those aspects of the Trust Territory Code that defendant now seeks to have established as prophylactic requirements above and beyond those required in Miranda, it does so recognizing the unique situation that Micronesians were in at the time (i.e. fewer available lawyers and less general legal knowledge among the public and police). Whether or not times have changed, however, the applicable statutory languages has not. That being said, the Court is not convinced that defendant's confession was obtained as a result of the failure to appraise him of his right to contact his family or employer or of his right that he had to be either charged or released within 24 hours.

Defendant urges the Court to construe the word "result" to mean simply "outcome," obviating any need for defendant to 1329 establish or allege a casual connection between the failing to read a defendant his rights and the existence of a confession. This cannot possibly be what the legislature intended according to the plain meaning of the statute. The phrase "as a result of" necessarily means that the violation must be the proximate cause of the improperly obtained evidence. Thus, in order to suppress evidence obtained in violation of 18 PNC § 218, defendant must at the very least assert a causal link between the failure of investigators to read him his rights beyond those required by Miranda and a resultant confession. Consequence will not be presumed where it is not alleged. Furthermore, extending Miranda to the technical per se rule defendant advocates obscures the significance of those rights announced in Miranda. Finally, the government's failure to abide by its own statutory procedures does not necessarily offend due process, particularly where the failure results in no harm to the accused.

In light of defendant's mother's participation in the pre-arrest investigation, the government's failure to appraise defendant of his right to contact his family could not reasonably have been the proximate cause of his written confession. Defendant does not suggest whom he would have contacted or why being informed of his right to initiate such contact might have yielded a result other than his signing a written confession. Defendant's assertion that the violation caused him to confess is mere conjecture, and he conceded as much at the hearing.

Defendant next contends that he should have been read his right to be charged or released within 24 hours. The purpose of this warning is to provide defendants notice of the crime(s) with which they have been charged. *Trust Territory v. Monu*, 7 TTR 620 (1978). In that case, Monu had been arrested pursuant to a complaint, and police failed to read him his right to be charged or released within 24 hours under 12 TTC § 70. The Appellate Division found that this violation was inconsequential because, as the trial court found, Monu already knew the reasons for his arrest. Similarly, because defendant in this case provided a voluntary, noncustodial confession and because he produced a portion of the stolen cash, defendant undoubtedly must have known the reason for his arrest. Had defendant asserted in the affidavit he provided that he did in fact not know the reasons for his arrest, the outcome might be different. *See, e.g., Trust Territory v.*

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Sokau, 4 TTR 435, 437 (1969) (where defendant failed to challenge the officer's version of the circumstances surrounding his signing of a Miranda waiver form, admissibility of the confession upheld). Thus, again, the failure to read defendant this right could not reasonably have caused him to confess.

¶330 Because the basis for defendant's suppression motion is not sufficiently established by the facts that defendant presents, compare *United States v. Dicesare*, 765 F.2d 890, 896 (1985); *see United States v. Hickok*, 481 F.2d 377, 379 (9th Cir. 1973), the Court declines defendant's request for an evidentiary hearing on the matter.

It is worth noting that the government could easily avoid litigating this issue in the future by changing or supplementing the Miranda waiver form and by reading defendants of all of the rights delineated in 18 PNC § 218. In this case, however, the failure to read defendant those rights which are not encompassed by Miranda was not the proximate cause of his confession.

Defendant's motion to suppress and his request for an evidentiary hearing are therefore DENIED.